IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Crl.MC.No. 425 of 2006(A)

CC.330/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PALAKKAD

.....

PETITIONER: ACCUSED:

M.K. SUKUMARAN, S/O. KUNJU,
ARTHAKKATTU KALAM HOUSE,
EZHAYAKKAD, KONGAD.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI S.DILEEP.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.K.MOHANAN, J.

CRL.M.C.NO. 425 OF 2006

Dated 11th September, 2007

ORDER

The petitioner herein is the sole accused in C.C.No.330/2005 in the file of the Judicial First Class Magistrate-II, Palakkad for the offences punishable under sections 135 and 126 of the Electricity Supply Act, 2003 and section 39 of the Indian Electricity Act, 1910. The petitioner challenged annexure-A Final Report upon which the court below took cognizance. According to the petitioner, the court below has no jurisdiction to take cognizance upon the report filed by the Assistant Sub Inspector of Police of Kongad police station who is not an officer authorised as per section 151 of the Electricity Act, 2003. Therefore he prays to quash the proceedings in C.C. 330/2005 of the JFCM-II, Palakkad.

2. According to annexure-A Final Report, the allegation is that on 16-2-2005 at 16 hours when the de facto complainant along with others inspected the electric metre, C.T kept at north western wall inside the Modern Control Rice

Mill owned by the accused situated at building No.1/342, Kannikkulam, Mundur No.II vilage, Mundur panchayath, the APTS seal was found broken, and the seal on the terminal cover of the metre box was also found missing and the pressure coil was found alternatively connected and thus the accused committed theft of electricity worth of Rs.3,28,460/-. On the basis of the information given by the de facto complainant, crime No.61/2005 of Kongad police station was registered and after conducting investigation, a report in crime No.121/2005 of Kongad police station was filed before the court below. Annexure-A is the report filed wherein the petitioner is shown as accused for the offences punishable under sections 135 and 126 of the Indian Electricity Supply Act, 2003 and section 39 of the Indian Electricity Act 1910. Based upon annexure-A Final Report, C.C.No.330/2005 is instituted in the court below. It is the above proceedings seeks to be quashed by this Court by invoking Section 482 Cr.P.C.

3. Heard the counsel for the petitioner as well as

the Public Prosecutor.

4. The learned counsel appearing for the petitioner has drawn my attention to section 151 of the Electricity Act and submitted that the court will get jurisdiction or can take cognizance only on the basis of a complaint in writing filed before it by the officer competent mentioned in section 151 of the Electricity Act, 2003. Section 151 reads:

> "151. Cognizance of offences.- No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose".

Obviously, annexure-A charge sheet would show that the report is filed by the A.S.I., Kongad police station. On a reading of section 151 of the Act, it can be seen that unless there is a specific authorisation by the competent authorities mentioned in section 151 of the above Act, a

police officer is not empowered to file report under section 173 Cr.P.C. or even a complaint for the offences covered by the above Act. The learned Public Prosecutor submitted that so far, no notification is issued by the Government or the Board authorising any category of police officers to file report or complaint with respect to the offences contemplated by the above Act.

5. In the decision reported in **Paramasivam v. Union of India** (2007 (2) KLT 733), this Court has held that the trial court cannot take cognizance based on report filed by the police under section 173 of the code of Criminal Procedure.

6. On a perusal of annexure-A report, it can be seen that the A.S.I of Police, Kongad police station who submitted the report will not come in any of the class of authority enumerated in section 151 of the Act. In view of Section 151 of the electricity Act, 2003, the court will get jurisdiction to take cognizance only upon a complaint in writing made by the Appropriate Government or Appropriate Commission or any of their officer authorised

by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose. In the absence of any authorisation or notification under section 151 of the above Act, or any recital in the alleged charge showing the authority of the A.S.I concerned or for filing the report, I am of the view that the court below has no jurisdiction to take cognizance based upon annexure A report.

7. In the result, all proceedings against the petitioner in C.C.330/2005 on the file of the Judicial Magistrate of the First Class-II, Palakkad is quashed. It is made clear that quashing of the above proceedings will not be a bar for the appropriate authority to take appropriate action for realising the loss, if any, sustained by the Board in the alleged incident.

The Crl.M.C. is allowed.

V.K.MOHANAN, JUDGE.

kvm/-

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: